

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance
for Law Enforcement Act

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CC Docket No. 97-213

COMMENTS

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TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	2
II. LOADING THE INTERIM STANDARD WITH ADDITIONAL FEATURES AND FUNCTIONS WILL INCREASE COSTS AND DELAY IMPLEMENTATION.....	4
III. IN THE EXERCISE OF ITS RULEMAKING AUTHORITY UNDER SECTION 107 (B) OF CALEA, THE COMMISSION MUST NECESSARILY ADHERE TO THE INTENT OF CONGRESS WHEN IT ENACTED CALEA.	6
IV. THE CONGRESSIONAL INTENT BEHIND THE MEANING OF CALL- IDENTIFYING INFORMATION MUST BE ADHERED TO BY THE COMMISSION.....	9
V. THE COMMISSION SHOULD NOT MODIFY THE INTERIM STANDARD WITH GOVERNMENT PUNCH LIST ITEMS.	12
A. The Content of Subject-Initiated Conference Calls	12
B. Party Hold/Join/Drop Information.....	13
C. Subject-Initiated Dialing and Signaling Information.....	15
D. Certain Types Of In-Band And Out-Of-Band Signaling Information, Such As Notification That A Voice Mail Message Has Been Received By A Subject.....	17
E. Time Stamp Information.....	18
F. Post-Cut-Through Digits Representing All Telephone Numbers Needed To Route A Call.....	18
CONCLUSION.....	19

SUMMARY

The Interim Standard is sufficient in its definition of the modifications carriers must make to their networks in order to provide law enforcement access to call-identifying information and the content of targeted communications. The costs to BellSouth of complying with the Interim Standard alone approach Congress's initial authorization of \$500 million for the entire nation. The costs to BellSouth of complying with redundant punch list items at full capacity will exceed that initial authorization.

Only one switch vendor has promised a (non-punch list Interim Standard) CALEA-compliant product delivery by the second quarter of 2000. Because switch deployment of software and hardware modifications takes anywhere from eighteen (18) to twenty-four (24) months, the Commission's June 30, 2000 compliance deadline is already in jeopardy. Adding redundant punch list items will not only increase costs substantially but will also delay development and deployment.

CALEA's legislative history makes clear that call-identifying information is simply numbers dialed to and from the target's phone, obtained pursuant to a court order for either a pen register or a trap and trace device. Call content are the conversations of the target, obtained pursuant to a Title III court order. The Interim Standard enables law enforcement to continue to receive assistance from carriers to receive such information without impairment, while at the same time limiting the retrieval of information that implicated privacy.

CALEA's legislative history further makes clear that carriers are not required to modify or design their networks to provide government access to signaling information that is not otherwise reasonably available to the carrier. The Interim Standard employs a practical definition of the term "reasonably available" contingent on the use or generation by a particular

network element of the information in the course of call processing or service provision to the subscriber. Carriers are not required by statute, and should not be required by Commission rule, to provide network intelligence or signaling information for law enforcement to use for evidence gathering or evidentiary integrity purposes or to modify network protocols solely to transport surveillance information.

The Commission correctly rejected three of the government's punch list items but erroneously insists on the addition of six punch list items to the Interim Standard. The costs to implement the punch list items represent nearly a 50% increase in the known available costs for BellSouth's local exchange operations. Moreover, the six proposed items provide redundant capabilities, and are justified only by an expanded definition of "call identifying information." The Commission should not require their inclusion in the Interim Standard, and should instead declare the Interim Standard as a complete safe harbor.

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COMMENTS

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Personal Communications, Inc., and BellSouth Wireless Data, L.P., ("BellSouth")¹ on behalf of themselves and their affiliated companies, by counsel, file these comments to the Further Notice of Proposed Rulemaking.² BellSouth demonstrates herein that the industry-developed technical requirements³ for wireline, cellular, and broadband PCS carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for

¹ BellSouth Corporation (BSC) is a publicly-traded Georgia corporation that holds the stock of BellSouth Enterprises, Inc. (BSE) and BellSouth Telecommunications, Inc., a Bell operating company providing wireline telephone exchange and exchange access service in parts of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee (BST). BSE holds the stock of BellSouth Cellular Corporation (BCC), a Georgia corporation that provides commercial mobile radio service in markets throughout the United States, and holds personal communications service (PCS) licenses in North Carolina, South Carolina, Georgia and Tennessee, and BellSouth Personal Communications, Inc. (BPC), a Delaware corporation that provides broadband (PCS) services. BSC holds a controlling interest in BellSouth Wireless Data, L.P. (BWD), a Delaware limited partnership that operates a nationwide, connectionless, packet-switched wireless data communications network using frequencies licensed to BWD by the FCC in the Specialized Mobile Radio (SMR) Service bandwidth.

² *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Further Notice of Proposed Rulemaking, FCC 98-282 (rel. Nov. 5, 1998), ("FNPRM").

³ Telecommunications Industry Association (in association with Standards Committee T1 Telecommunications), *Interim Standard (Trial Use Standard): Lawfully Authorized Electronic Surveillance*, J-STD-025 (December 1997) (hereinafter "Interim Standard" or "J-STD-025").

Law Enforcement Act of 1994 are not deficient in any way. The cost to BellSouth of implementing CALEA's assistance capability requirements is at least \$ 388 million under the Interim Standard. Were the Commission to adopt additional technical standards as proposed in the Further Notice, and which are not necessary for wireline, cellular and broadband PCS carriers to meet CALEA's assistance capability requirements, the cost of compliance to BST alone would rise over \$ 182 million to nearly \$ 529 million.

I. INTRODUCTION

The Commission is correct to recognize that industry is in the best position to determine how to implement CALEA's technical requirements most effectively and efficiently, and that it is appropriate for industry, in consultation with the law enforcement community, to develop a final safe harbor standard for CALEA compliance.⁴ The Interim Standard in fact constitutes just such a final and appropriate safe harbor standard. The Commission is further correct in determining that various extra-standard items proposed by the FBI have no business in the safe harbor standard: surveillance status messages, continuity check tones, and feature status messages.⁵ However, the FCC's tentative conclusions that the provision of: (1) the content of subject-initiated conference calls; (2) party hold/join/drop information; (3) subject-initiated dialing and signaling information; (4) certain types of in-band and out-of-band signaling information, such as notification that a voice mail message has been received by a subject; (5) time stamp information; and (6) post cut-through digits representing all telephone numbers needed to route a call, constitute call-identifying information or are technical requirements that meet the assistance capability of requirements of CALEA, represent a costly capitulation to incessant law enforcement lobbying.

⁴ FNPRM ¶ 34.

⁵ *Id.* ¶¶ 110, 114, 121.

CALEA did not reinvent the wheel. The record in this docket demonstrates that telephone companies have historically cooperated with law enforcement agencies when presented with a lawful court order or other authorization enabling government agents to listen unobserved to individuals' telephone conversations and obtaining, without individuals' knowledge, information identifying telephone numbers that people dial. At times, government agents may have received more information than was expressly authorized by underlying wiretap statutes or court orders because such extra information could not be removed due to limitations in then-existing technology. All call content and call identification information so obtained were subject to the government's subsequent proper evidentiary qualification in the appropriate criminal proceeding. In various pleadings filed in this proceeding, however, government interests have sought regulation that shifts to non-law enforcement carriers the technological burdens of collecting the broadest array of information and documenting this information to ensure evidentiary integrity in subsequent prosecutions.

The Commission has noted the effect that the relatively recent introduction of digital transmission and processing techniques and the proliferation of wireless services has had on the government's ability to collect such information. CALEA was designed to preserve, not expand, the government's ability to conduct surveillance, and it was also designed to safeguard privacy and allow the development of new services and technologies.⁶ With the "increasingly powerful and personally revealing technologies" deployed by carriers, however, the government has an enticing opportunity to cast a net wider than the precise call-content and call-identification data authorized by underlying wiretap and pen register statutes, and with this wider cast to obtain records it can use to qualify this information as admissible evidence in criminal investigations.

⁶ *Id.* ¶ 3.

Government attempts to secure the broadest possible array of technical surveillance assistance capabilities to aid in its law enforcement function are natural and, indeed, logical. The Interim Standard, however, assures law enforcement of its ability to maintain the integrity of its surveillance efforts by preserving its ability to obtain call content and call identification data.

Congress' initial four-year authorization (but not appropriation) of \$500 million is woefully inadequate to cover the costs of affected carriers in complying with CALEA's technical assistance requirements. What the Commission advocates by recommending the addition of six "punch list" items to the Interim Standard, however, is a cost to society far in excess of the already exorbitant cost to carriers of technical compliance with the Interim Standard. For the telecommunications industry, the costs of complying with CALEA are not limited to the costs of upgrading switching equipment. Every time a carrier proposes to introduce a new service or technology it will have to undertake a CALEA compliance analysis. The technical costs of this analysis alone may break the business case for a nascent communications technology service. The more the Commission expands Congress' definition of call-content and call-identifying information, the more likely it is that a wider range of potential new services will be subjected to such costly analyses.

II. LOADING THE INTERIM STANDARD WITH ADDITIONAL FEATURES AND FUNCTIONS WILL INCREASE COSTS AND DELAY IMPLEMENTATION

BST has obtained general data from switch vendors in order to estimate the cost of complying with CALEA. BST's cost estimates for an integrated switch-based CALEA solution include the costs associated with the deployment of twelve (12) generic upgrades in order to bring BST to the specified switch generics required to comply with J-STD-025 as well as the "punch list" items. Interim switch generic upgrades required to provide a long-term database method of number portability (LNP) or to make BST switches Year 2000 (Y2K) compliant were

not included in the estimates.⁷ Although BellSouth will continue to evaluate non-switch based CALEA technical solutions, none appear to be viable at present.

Once the switch generic is made available for use in BST's network, usual deployment requires a period of 18 to 24 months after that date. The deployment period may also be affected if switch generic specific hardware is also required for the generic load to be installed, as will be the case with some switches. Therefore, if a switch generic to support the punch list items becomes available in the second quarter of 2002, the features would be deployed, generally speaking, 18 to 24 months later, or between the fourth quarter of 2003 and the second quarter of 2004.

The costs estimated for BST as follows:

Costs in Millions (\$M)			
<u>Item/Category</u>	<u>J-STD-025</u>	<u>J-STD-025 Plus Punch List</u>	<u>J-STD-025 Punch List at Capacity</u>
Telco Costs			
Non Switch			
Capital	\$ 2.8	\$ 2.8	\$ 2.8
Expense	\$ 37.2	\$ 57.8	\$ 57.8
Telco Costs			
Switch Generic			
Capital	\$154.4	\$199.6	\$199.6
Expense	\$ 91.0	\$117.6	\$117.6
Feature			
Capital	\$ 56.0	\$ 85.6	\$119.2
Expense	\$ 0	\$ 0	\$ 0

⁷ BST's estimates were assembled utilizing historical and specific costs for the activities inclusive of Project Management, Documentation, Method and Procedure Development, Bellcore Funding, Central Office Switch Order Preparation, Project Scheduling, Switch Generic and Switch Feature Testing, Technical Support, Switch Translations, Switch Generic Load Efforts, Switch Generic Load Costs (both software and hardware), BST and Vendor Engineering and Installation Costs, Law Enforcement Agency Link Circuit Costs, Surveillance Administration Costs, and Maintenance and Administrative Upgrades to Systems.

Other Hardware Capital	\$ 6.0	\$ 6.0	\$ 31.9
Totals	<u>\$347.4</u>	<u>\$469.4</u>	<u>\$528.9</u>
Capital	\$219.2	\$294.0	\$353.5
Expense	\$128.2	\$175.4	\$175.4

BellSouth's wireless affiliates estimate that it will cost anywhere between \$40 - \$50 million to comply with J-STD-025 alone

In addition to the magnitude of the costs quoted by vendors, the Commission should be aware that only one wireline switch vendor has been able to commit to availability of any punch list items by the Commission's current June 30, 2000 compliance date. As stated above, and even with timely delivery then, BellSouth would need an additional 18-24 months to deploy the capabilities within its network following vendor delivery. Two other switch vendors have advised BST that any punch list compliant product will not be available until the fourth quarter of 2000 and the fourth quarter of 2002, respectively. Assuming delivery of a functionally compliant vendor product at these times, deployment could not be completed on the BST network until as late as fourth quarter 2004. Although a "national buy-out" of CALEA technical solutions may somewhat reduce the cost of development and deployment, such a "buy-out" will not reduce the costs to the extent as to make the necessary modifications "reasonably achievable". Moreover, the Commission's selective pruning of punch list items will not substantially reduce carriers' capital and expense costs, because any additions to the Interim Standard will significantly increase carrier costs.

III. IN THE EXERCISE OF ITS RULEMAKING AUTHORITY UNDER SECTION 107 (B) OF CALEA, THE COMMISSION MUST NECESSARILY ADHERE TO THE INTENT OF CONGRESS WHEN IT ENACTED CALEA.

As the Commission recognized in its FNPRM in the enactment of CALEA Congress sought to balance three important policies: "1) to preserve a narrowly focused capability for law

enforcement agencies to carry out properly authorized intercepts; 2) to protect privacy in the face of increasingly powerful and personally revealing technology; and 3) to avoid impeding the development of new communications services and technologies” (emphasis supplied).⁸ In its evaluation of whether the FBI’s “punch list” items met the assistance capability requirements of CALEA as set forth in Section 103 (a) (1) – (4), which the Commission proposed to interpret narrowly, the Commission stated in its FNPRM that “if necessary” it would refer to the legislative history in order to ascertain Congressional intent.⁹ BellSouth suggests that the Commission must necessarily and predominantly rely on the legislative history of CALEA in order to properly carry out its rulemaking authority consistent with the critical balance between law enforcement, privacy and communications technology interests which Congress intended to maintain in CALEA.

CALEA was enacted for the limited purpose of ensuring that new and technically advanced carrier services offered to its customers do not impede law enforcement’s ability to conduct electronic surveillance, and for law enforcement to receive what it had received in the past: numbers dialed to and from the target’s phone (“call-identifying information”) pursuant to a court order for either a pen register or a trap and trace device, and the content of the conversation (“communications”) of the target, pursuant to a Title III court order. Thus, Congress placed new restrictions on law enforcement’s use of pen register devices in recognition of technology which could now limit the information law enforcement would receive from such a device¹⁰ and it extended additional privacy protections to additional types of communications.¹¹ CALEA also

⁸ FNPRM ¶ 3.

⁹ *Id.* ¶ 25.

¹⁰ H.R. Rep. No. 103-827, 103d Cong., 2d Sess., Pt. 1 (1994) at 10, (“Leg. Hist.”).

¹¹ *Id.* at 17.

further defined the telecommunications industry's duty to cooperate with law enforcement and to establish procedures based on industry standards setting, and it clarified an obligation for carriers to design their network systems such that they do not impede electronic surveillance.¹² The need for CALEA arose because of recognized and demonstrated law enforcement problems with the capacity of cellular systems to accommodate simultaneous surveillances, the tendency of certain custom calling features to impede electronic surveillance which had heretofore been based on "clipping on" a wire pair leading to the target's premises in an analog environment, and other problems which affected law enforcement's ability to receive call set up information and to follow the target's communications.¹³

What is quite clear from the legislative history of CALEA is that law enforcement's authority to conduct electronic surveillance remained unchanged. The scope of CALEA was narrowed significantly from its originally proposed form¹⁴ and it continued to limit law enforcement's electronic surveillance authority to obtaining the communications of the targeted subscriber and the originating and destination numbers of targeted communications.¹⁵ Thus, law enforcement authorities under CALEA should have no more and no less access to information than they had in the past. CALEA was not intended to provide "one stop shopping" to law enforcement for its electronic surveillance needs.¹⁶ The FBI's petition which alleges that the Interim Standard is deficient and which serves as the basis of the Commission's FNPRM

¹² *Id.* at 13-14.

¹³ *Id.* at 14-15.

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 22.

analysis of the “punch list items,” has turned the original purpose of CALEA on its head.¹⁷ The Commission must return the implementation process of CALEA to its original purposes as clearly demonstrated by Congress in the legislative history of CALEA. The evidence in the record of this matter demonstrates that the Interim Standard as approved by Telecommunications Industry Association meets the assistance capability requirements of CALEA and should remain as promulgated. The Interim Standard properly incorporates CALEA terms and concepts such as “call identifying information” and “reasonably available,” and therefore properly reflects the cost benefit approach and the balancing of economic factors in the implementation of CALEA which Congress clearly required in its enactment.¹⁸

IV. THE CONGRESSIONAL INTENT BEHIND THE MEANING OF CALL-IDENTIFYING INFORMATION MUST BE ADHERED TO BY THE COMMISSION.

Although the Commission in its FNPRM proposed to interpret the assistance capability requirements of CALEA narrowly¹⁹ it failed to fully consider the legislative history in ascertaining Congress’ intent, particularly with regard to the meaning of call-identifying information. A proper reading of the definition of call-identifying information and complete consideration of the Congressional intent behind the definition demonstrates that several of the “punch list” capabilities sought by the FBI are in fact not required in the standard as the Commission has tentatively concluded. The Commission’s tentative sanction of FBI attempts to significantly expand the meaning of the term “call-identifying information” in order to enable it to receive capabilities beyond the scope of CALEA should not be affirmed.

¹⁷ Joint Petition for Expedited Rulemaking, Federal Bureau of Investigation and Department of Justice (March 27, 1998) at 30 (FBI/DOJ Petition).

¹⁸ Leg. Hist. at 19 and 28.

¹⁹ FNPRM ¶ 25.

Section 103(a)(2) of CALEA, the call-identifying provision, requires carriers to ensure that their equipment, facilities or services are capable of “expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier.”²⁰ The language of this provision, as well as its legislative history, is clear that this requirement mandates access to and the provision of numbers identifying the party called by the target’s service and numbers calling the target’s service. CALEA defines “call-identifying information” as the “dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscription by means of any equipment, facility, or service of a telecommunications carrier.”²¹ The legislative history of CALEA leaves virtually no doubt as to the meaning of “call-identifying information” and the congressional intent behind the carrier requirement to provide such information to law enforcement:

“The term ‘call-identifying information’ means the dialing or signaling information that identifies the origin and destination or (sic) a wire or electronic communication placed to, or received by, the facility or service that is the subject of the court order or lawful authorization.” For voice communications, this information is typically the electronic pulses, audio tones, or signaling messages that identify the numbers dialed or otherwise transmitted for the purpose of routing calls through the telecommunications carriers’ network. In pen register investigations, these pulses, tones, or messages identify the numbers dialed from the facility that is the subject of the court order or other lawful authorization. In trap and trace investigations these are in incoming pulses, tones, or messages which identify the originating number of the facility from which the call was placed and which are captured when directed to the facility that is the subject of the court order or authorization. Other dialing tones that may be generated by the sender that are used to signal customer premises equipment of the recipient are not to be treated as call-identifying information.²²

²⁰ 47 U.S.C. § 1002(a)(2).

²¹ 47 U.S.C. § 1001(2).

²² Leg. Hist. at 21

Thus, Congress defined the term “call-identifying information” narrowly to include only number information which has been traditionally provided in response to court orders or other lawful authorizations for pen registers and trap and trace devices. Of course, such information would also be made available by carriers in response to a Title III order. Congress further limited the provision of call-identifying information to that which is “reasonably available” to the carrier, a limitation that has not been placed on the requirement to provide the call content or the communications of the target. Thus, any requirement placed on a carrier to provide features or capabilities which are not call-identifying information or call-identifying information which is not reasonably available to it raises significant legal and privacy concerns.

Congress did not require (nor should the Commission sanction FBI attempts to require) carriers to modify or design their network systems to provide government access to signaling information that is otherwise not reasonably available to the carrier. The legislative history of CALEA explicitly provides that if call-identifying information “is not reasonably available, the carrier does not have to modify its system to make it available.”²³ CALEA clarifies a carriers’ obligation to design its network systems such that they do not impede the electronic surveillance and it further defines a carriers’ duty to cooperate,²⁴ however, there is no CALEA requirement for a carrier to provide network intelligence or signaling information for law enforcement to utilize for evidence gathering or evidentiary integrity purposes. In short, carriers should not be required to “create evidence” for use by the government.

The Interim Standard sets forth a common sense description of the term “reasonably available” which should be followed by the Commission. Section 4.2.1 of J-STD-025 provides:

²³ *Id.* at 22

²⁴ *Id.* at 13-14

“Call-identifying information is reasonably available if the information is present at an intercept access point (IAP) for call processing purposes. Network protocols (except LAESP) do not need to be modified solely for the purpose of passing call-identifying information. The specific elements of call-identifying information that are reasonably available at an IAP may vary between different technologies and may change as technology evolves.”

The meaning of this concept is that call-identifying information is reasonably available at a network element (typically a network switch) only if it is used or generated by that network element in the course of call processing to provide services to the subscriber. Thus, network protocols that support call processing in carrier networks should not be modified solely to transport surveillance information. Such modifications to the fundamental infrastructure of telecommunications networks would be prohibitively expensive and would severely delay the implementation of any CALEA technical solution. In sum, the Commission should look to the Interim Standard in order to determine what is “reasonably available” to a carrier and which must be provided to the government pursuant to a pen register or trap and trace order or other lawful authorization, assuming that such information is in fact call-identifying information.

V. THE COMMISSION SHOULD NOT MODIFY THE INTERIM STANDARD WITH GOVERNMENT PUNCH LIST ITEMS.

A. The Content of Subject-Initiated Conference Calls

In concluding that the content of subject-initiated conference calls is a technical requirement that meets the assistance capability requirements of Section 103, the Commission ignored the concession in the FBI/DOJ Petition that the Interim Standard “does not amount to a reduction in the information that has been available to law enforcement.”²⁵ This concession should have been dispositive. The FBI Director himself testified before Congress that CALEA

²⁵ FBI/DOJ Petition at 30.

was “intended to preserve the status quo, that it was intended to provide law enforcement with no more and no less access to information than it had in the past.”²⁶ The Interim Standard correctly implements CALEA’s requirement that it is the communications content of the specific target, or subject, of the authorized electronic surveillance which is at issue.

Unfortunately, the Commission has tentatively concluded that law enforcement should have expanded information collection capabilities at the expense of the telecommunications industry. While the Commission notes that such capabilities “meet” the technical assistance requirements of Section 103, it makes no finding that such expanded capabilities are necessary in order to meet the technical assistance requirements, or that the Interim Standard is deficient in any way. As a result, all new products and services offered by CALEA-covered carriers will be burdened with additional costs, and a business case may, in some instances, never be made with respect to certain new services. In order to minimize these costs, should the Commission decide to adopt its tentative conclusion over the express objection of BellSouth, the industry standard should utilize a single call content channel (CCC) to deliver the content of the parties’ conversation or a conference call, regardless of the number of parties involved. The Commission should also consider that, even without the deployment of additional equipment, the availability of this technical requirement is wholly dependent on the development schedule of suppliers.

B. Party Hold/Join/Drop Information

The Commission here confuses the media with the message. As demonstrated above, the actual call-identifying information intended by Congress is simply the sequence of numbers indicating call origination or destination. This is true regardless of whether the medium is electronic pulses (such as dial pulses), audio tones (such as touch-tones or multi-frequency

²⁶ Leg. Hist. at 22-23.

tones), or signaling messages (such as ISDN D-channel messages). Information such as which parties are on a call (or indications such as dial tone, lights, busy tone or ringback tone) are clearly not “numbers” and therefore not call-identifying information. While information leading to the identity of third parties who join or drop from a target’s call may be useful to law enforcement for any number of purposes, it is not information as to “call content” nor is it “call identifying.” It is information that is beyond the scope of CALEA. CALEA imposed no duty on a carrier to create investigative and evidentiary information. It merely requires carriers to modify their networks to be able to continue to provide call-identifying information and the content of target communications to law enforcement.²⁷

While an expansive definition of “call identifying information” may “meet” the requirements of CALEA, the Commission has not demonstrated that such an expansion of the status quo is necessary in order meet the requirements of CALEA. The Commission, however, correctly recognizes that in the case of features implemented in customer premises equipment (CPE), the information that would allow a carrier to inform a government agency of a change in status is not reasonably available to a carrier. This is consistent with section 4.2.1 of the Interim Standard which states that call-identifying information is reasonably available if the information

²⁷ The Commission obliquely refers to government attempts to impose burdensome recordkeeping requirements on carriers. In paragraph 162 of the FNPRM the Commission states that it “permits telecommunications carriers to use their existing practices to the maximum extent possible, and concludes that the additional cost to most carriers for conforming to the regulations contained in the FNPRM should be minimal.” This statement appears to have been transposed *verbatim* from the Commission’s Section 105 Notice of Proposed Rulemaking, 13 FCC Rcd 3149, 3193 ¶ 74. As there are no regulations proposed in the FNPRM, as there is no “general guidance regarding the conduct of carrier personnel or the content of records” contained in the FNPRM, and as the Commission further advised in the FNPRM that it will not revisit any issues from its Section 105 NPRM in this FNPRM, BellSouth, in response to the Commission’s request for comments contained in paragraph 162 of the FNPRM, restates and incorporates herein its December 12, 1997, Comments and February 11, 1998, Reply (Erratum filed February 12, 1998) to the Section 105 NPRM as well as its December 12, 1998, Response to Initial Regulatory Flexibility Analysis previously filed in this docket.

is present at an intercept access point for call processing purposes, and that network protocols do not need to be modified solely for the purpose of passing such information.

Even if the Commission affirms its tentative conclusions regarding party hold/join/drop information, it should rule dispositively that information about parties on “meet-me” conference calls is not reasonably available to switch-based CALEA carriers. Such information is neither used nor generated by the switched network elements in the course of call processing to provide meet-me conference services. Current SS7 and ISDN call processing protocols, the core intelligent infrastructure of the PSTN, would have to be modified at significant time and expense in order to transport surveillance information. While a feasibility analysis for such modifications to meet-me conference bridges may seem desirable, the costs of undertaking the appropriate analysis and cost development are prohibitive.

C. Subject-Initiated Dialing and Signaling Information

The Commission should not have determined that subject-initiated dialing and signaling information “fits within the definition of call-identifying information” for the same reasons set forth above with respect to party hold/drop/join information. Moreover, the Further Notice reveals apparent confusion on the part of the Commission in its queries directed to remote operation of such features. Government request for a “Subject-Initiated Dialing and Signaling” capability, as documented in Appendix 1 - Proposed Final Rule § 4(c)(1) in the FBI/DOJ Joint Petition is “[f]or all subject-initiated dialing and signaling, a message shall be triggered and delivered, which message may be the origination message, that reports subject inputs of flash hooks and other key usage signaled to the network through the use of the following triggers: (i) when a switchhook flash or its equivalent is detected and (ii) when a key press signaled to the network is detected.” No information is provided as to aspects of a subject’s service, whether the

subject's signaling occurs locally or remotely.²⁸ No signaling information is provided that would in any way identify direction or destination of a call. The information is totally redundant with the information provided by a party join/drop/hold capability, which, as has been shown, is beyond the scope of CALEA. Thus, it would not be cost effective to adopt this capability if the Commission adopts the party join/drop/hold capability. Further, adopting this requirement could potentially increase the cost of a new technology to the point that a business case could not be made for market deployment (even the costs of the technical work to support a petition seeking a ruling that meeting the requirement is not reasonably achievable may undermine the business case).

The FBI's earlier argument that this information should be provided because it was detectable when pen registers were conducted in the days of analog technology should not have persuaded the Commission. The information was provided because technology was not sufficiently developed to limit the information provided to that which was specifically authorized under the pen register statute. However, CALEA specifically requires carriers to provide call-identifying information "in a manner that protects the privacy and security of communications and call identifying information not authorized to be intercepted."²⁹ Given this statutory imperative, any basis for adopting this capability requirement as "call-identifying information" simply because the information may have been detected by the FBI in the past is without foundation in law. Where new technology enables precise implementation of the intent of the law with regard to the protection of privacy interests, new technology must be utilized to do so.

²⁸ Considering the capability as requested by FBI/DOJ, the Commission's request for comments about remote operations of features is irrelevant.

²⁹ 47 U.S.C. § 103(a)(4)(A).

Past technological limitations should not dictate that new implementations deliver information not specifically authorized by Congress.

D. Certain Types Of In-Band And Out-Of-Band Signaling Information, Such As Notification That A Voice Mail Message Has Been Received By A Subject

The Commission's rather ambiguous tentative conclusion concerning certain types of signaling information will, if adopted, lead to unnecessary and redundant expenditures on the part of CALEA carriers. The Further Notice acknowledges that the record in this proceeding demonstrates that much of the information about network generated tones is available on a call content channel (CCC). In order to reduce costs to the residential ratepayer, the assistance capability developmental work and associated costs to detect such tones and generate a call data channel (CDC) message should be avoided unless such information is a requirement of pen registers and trap and trace surveillances. At a minimum, the Commission should confirm on the record developed herein that the following are redundant messages:

- (1) A CDC message that informs the government that ringing is occurring on an incoming call when the government is already informed that a terminating call to the subject has arrived;
- (2) A CDC message that informs the government that a call-waiting tone is delivered when the government already knows that the subject subscribes to call-waiting and is informed that a second call has arrived.

The Commission should not require carriers to detect and analyze in-band or out-of-band signaling that is generated somewhere else and only "passes through" a network element. Such information is not reasonably available, and would require the widespread deployment of signal detection equipment in order to detect signals that are not normally detected at many network elements.

E. Time Stamp Information

The Interim Standard is not deficient and need not be enhanced. A time stamp parameter is a mandatory element of every message defined. In response to the Commission's request for comment as to what is a reasonable amount of time for delivery of a message, a table of timing information has been developed for the Enhanced Surveillance Services (ESS) Standard, PN-4177 R-12, that provides such information. The Commission should clarify that a carrier adopting the timing requirements set forth therein will meet the time stamp information required by any rule finally adopted as a result of the Further Notice.

F. Post-Cut-Through Digits Representing All Telephone Numbers Needed To Route A Call

The Interim Standard is not deficient and need not be enhanced. The Commission has adopted an overly broad interpretation of call-identifying information. It is impossible for a carrier to distinguish between post cut-through digits that are used in another network or in CPE to route a call, and digits used to perform other functions. If any post cut-through digits are required to be delivered, all (including those which fall outside of the traditional definition of call-identifying information) must be delivered. The Interim Standard is adequate. In the case of a pen register, the government can order a one-way CCC and install the necessary equipment to extract dual tone multi frequency digits. Such a practice would allow carriers to avoid the expense of developing an unnecessary digit extraction feature in the switch and keeping touch-tone registers tied to a monitored call for the duration of the call. To require otherwise would be inefficient and uneconomical because it would require a large number of touchtone registers to be deployed in switching offices across the country for compliance with simultaneous pen register orders, that would likely be idle much of the time. In any event, the government should


be required to install and utilize, at its own expense, equipment to extract addressing information as set forth in 18 U.S.C. § 3121(c).

CONCLUSION

The \$500 million authorized to be appropriated by Congress will be woefully insufficient to reimburse the industry for its costs of compliance with CALEA and thus be inadequate to achieve the FBI's desired level of compliance. In apparent recognition of this fact, the government has apparently succeeded in persuading the FCC to creatively interpret and implement CALEA in such a fashion that significant unreimbursed costs are expected to be passed on to the industry and its customers. The Commission must, however, implement CALEA as it was intended by Congress; that is, narrowly and in a cost-effective fashion. It should declare the Interim Standard as it currently states a safe harbor.

Respectfully submitted,

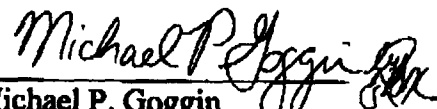
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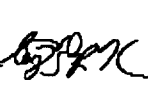
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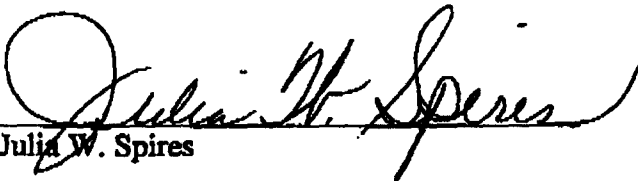
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December 14, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of December 1998, serviced all parties to this action with the foregoing **COMMENTS**, reference CC Docket No. 97-213, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


Julia W. Spires

Service List CC 97-213

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